ORIGINAL

No. 91-7879

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WILLIAM Fex,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

John B. Payne, Jr.
Attorney for WILLIAM Fex
Criminal Justice Act Assigned Counsel
for Appeal to the Sixth Circuit Court
22312 Garrison
Dearborn, Michigan 48124
(313) 562 5440

QUESTIONS PRESENTED

I

SHOULD CERTIORARI ISSUE TO REVIEW THE DETERMINATION OF THE MICHIGAN SUPREME COURT THAT THE 180 DAY RULE OF THE INTERSTATE AGREEMENT ON DETAINERS WAS NOT VIOLATED, WHERE THE DEFexNDANT SUBMITTED THE REQUEST FOR FINAL DISPOSITION TO INDIANA PRISON AUTHORITIES THE DAY HE WAS INFORMED OF HIS RIGHT TO DO SO, BUT HE WAS NOT INFORMED OF THIS RIGHT UNTIL SIX MONTHS AFTER THE DETAINER WAS PLACED ON HIM, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS?

Appellant answers, "YES".

Appellee answers, "NO".

Trial Court answers, "NO."

II

SHOULD THIS COURT GRANT CERTIORARI TO REVIEW THE DECISION OF THE MICHIGAN SUPREME COURT TO AFFIRM THE PETITIONER'S CONVICTION, WHERE THERE WAS A VIOLATION OF THE INTERSTATE AGREEMENT ON DETAINER'S 180 DAY RULE SINCE THE DEFexNDANT SUBMITTED HIS REQUEST FOR FINAL DISPOSITION ON SEPTEMBER 7, 1988, BUT WAS NOT BROUGHT TO TRIAL UNTIL MARCH 22, 1989, 16 DAYS AFTER THE EXPIRATION OF THE 180 DAY LIMIT, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUITS?

Appellant answers, "YES".

Appellee answers, "NO".

Trial Court answers, "NO."

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The Petitioner WILLIAM Fex respectfully prays that a writ of certiorari issue to review the decision of the Michigan Supreme Court, entered in the above proceeding on January 9, 1992.

REPORTED DECISIONS BELOW

The Petitioner was convicted in the Jackson Circuit Court, in No. 88 49555 FC. Judgment was entered on March 23, 1989. This judgment was not reported.

The conviction was affirmed in *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM Fex*, No. 91979 (1992).

JURISDICTION

This is a federal question decided by the Michigan Supreme Court in a way that conflicts with the decision of other state courts of last resort. This petition follows an appeal by leave from a conviction of Armed Robbery, MCLA 750.529, MSA 28.797 and Fexlony Firearm, MCLA 750.227(b), MSA 28.424(2). (Judgment and Probation/Commitment Order, April 20, 1989). Petitioner was convicted in the Jackson Circuit Court. The conviction was entered on March 23, 1989. Id. The Petitioner filed a timely notice of appeal on June 5, 1989. (Notice of Appeal).

The Michigan Court of Appeals reversed the conviction. *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM Fex*, No. 119192 (6th Cir. 1991). The Michigan Supreme Court reversed the Court of Appeals decision. *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM Fex*, No. 91979 (1992). Petitioner seeks review of that decision under jurisdiction of 28 USCA 1257(a).

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STATEMENT OF FACTS

The Defendant moved, unsuccessfully, for dismissal because he was not tried within 180 days of his Request for Final Disposition (hereinafter RFD) under the Interstate Agreement on Detainers (hereinafter IAD), MCLA 780.601, MSA 4.147(1). The court of appeals reversed. *People v. William Fex*, No. 119192 (Mich. App. June 21, 1991). The People's application for leave to appeal ensued.

The People contend that the decision of the court of appeals was erroneous because the 180 day period should have started to run from September 26, 1988, when the prosecutor received the RFD, not from September 7, 1988, when it was given to prison authorities. Defendant-Appellee responds that the decision of the court of appeals was correct for the reasons stated in the unanimous per curiam decision.

Defendant-Appellee further contends that this is not a "clean" IAD case, as urged by the People. The seriousness of the infringement of the Defendant's rights under the IAD are glossed over by the People.

The Defendant was first notified of the detainer, his rights under it and the RFD under the detainer on September 7, 1988. Tr. at 3. This was the date that the request was signed and served on the Indiana Prison authorities. Under the statute, the 180 days ended March 6, 1988. The trial did not begin until March 22, 1989. Tr. at 5.

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The Indiana authorities were obligated immediately to inform

the Defendant of his right to RFD. He was sentenced in April of 1988, but was not apprised of his RFD rights until September 7, 1988, almost six months later. Tr. at 5.

If the 180 day time limitation was not considered then there was another time limitation set forth in the IAD. That is 120 days from the time that the Defendant is transferred into the jurisdiction of the receiving state. In Mr. Fex case he was transferred on October 26, 1988; 120 days expired in Fexbruary, 1989.

The People contend that it would be unfair to charge the prosecutor with notice before it is actually received. As was pointed out by appellate counsel below, the prosecutor had actual notice of the fact that the Defendant was in prison, under sentence, in April, 1988. The court did not reach the question of the delay from April to September, but this, alone, would have justified the decision of the court of appeals.

REASON FOR GRANTING THE WRIT

I

CERTIORARI SHOULD ISSUE TO REVIEW THE DETERMINATION OF THE MICHIGAN SUPREME COURT THAT THE 180 DAY RULE OF THE INTERSTATE AGREEMENT ON DETAINERS WAS NOT VIOLATED, WHERE THE DEFENDANT SUBMITTED THE REQUEST FOR FINAL DISPOSITION TO INDIANA PRISON AUTHORITIES THE DAY HE WAS INFORMED OF HIS RIGHT TO DO SO, BUT HE WAS NOT INFORMED OF THIS RIGHT UNTIL SIX MONTHS AFTER THE DETAINER WAS PLACED ON HIM, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS.

Section (c) of the Interstate Agreement on Detainers (hereinafter IAD) states the following:

> The warden, commissioner of corrections or other official having custody of the prisoner **shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition** of the indictment, information or complaint on which the detainer is based. (emphasis added).

MCLA 780.601, MSA 4.147(1).

The IAD provisions are triggered only after a "detainer" is filed with the custodial state by the state having untried pending charges. *People v. Paulus*, 115 Mich. App. 183, 320 N.W.2d 337 (1982). A detainer is a "notification filed with the institution where a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in the notifying state". *Id.* at 186. Therefore, the first thing to determine is when the detainer was filed against the Defendant.

On Fexbruary 29, 1988, the 12th District Court of Jackson, Michigan had record of where the Defendant was located. A warrant was filed which showed the Defendant was in the Fort Wayne, Indiana jail. It flies in the face of counsel's experience to suggest that Michigan did not have a detainer placed on the Defendant with the

Indiana court. To believe that the Defendant would have been permitted his freedom if the Indiana prosecution had ended in dismissal or acquittal is unthinkable. Therefore, the detainer and the Defendant's rights under the IAD, vested at his sentencing in April of 1988.

According to the IAD, once the detainer was placed on the Defendant, the Indiana prison authorities were obligated to inform the Defendant of his right to final disposition without delay. The Court in *Edmonds*, held that a prisoner must be informed of his rights under the IAD, but that he in turn must notify both the prosecuting attorney and trial court of his whereabouts and his decision to invoke his right to RFD. This method guarantees all parties an equal opportunity to protect their rights. *Edmonds v. Corrections Department*, 78 Mich. App. 196, 203, 259 N.W.2d 423, 427 (1977). In *People v. Office*, the Defendant was informed by the Wisconsin authorities that a detainer had been lodged against him, but he was denied the opportunity to request final disposition because the portion of the form allowing him this request had been crossed out. Therefore, the Defendant did not have knowledge of his rights under the Detainer Act. *People v. Office*, 126 Mich. App. 597, 603, 337 N.W.2d 593, 595 (1983). The Court recognized that once a detainer has been filed, failure to bring formal charges violates the good faith and spirit of the IAD as it keeps the Defendant from asserting his rights under the act. *Id.* at 603, 337 N.W.2d at 595. Failure to inform the Defendant of his rights was a violation of Article III(c) of the IAD. *Id.* at 603-604, 337

N.W.2d at 595-596. Here, the detainer was placed on the Defendant in April of 1988, yet he was not informed of this until September 7, 1988; almost six months later. This is a flagrant violation of the Detainer Act. Tr. at 5. "A prisoner will not be penalized if the prison officials fail to carry out their duties under the (IAD) agreement." *People v. Bowman*, 189 Mich. App. 215, 218-219, 472 N.W.2d 645, 647 (1991). The burden of the violation by the officials in the sister state falls on the shoulders of the prosecutor. *People v. Marshall*, 170 Mich. App. 269, 277, 428 N.W.2d 39, 42 (1988). Therefore, the delay must be attributed to the prosecution.

Since the Defendant was not promptly advised of his rights under the IAD, he was denied equal protection under the law. The 180 day limit should have started to run from the date of the Defendant's sentencing in April of 1988 and would have ended in October of 1988. The Michigan Supreme Court's decision that the 180 days does not begin until September 26, 1988 was an error.

II

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE DECISION OF THE MICHIGAN SUPREME COURT TO AFFIRM THE PETITIONER'S CONVICTION, WHERE THERE WAS A VIOLATION OF THE INTERSTATE AGREEMENT ON DETAINER'S 180 DAY RULE SINCE THE DEFENDANT SUBMITTED HIS REQUEST FOR FINAL DISPOSITION ON SEPTEMBER 7, 1988, BUT WAS NOT BROUGHT TO TRIAL UNTIL MARCH 22, 1989, 16 DAYS AFTER THE EXPIRATION OF THE 180 DAY LIMIT, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUITS.

A Defendant must be brought to trial, or proceedings initiated, within 180 days on any untried indictment, information or complaint which is the basis for the detainer lodged against him. *People v. Beamon*, 83 Mich. App. 121, 268 N.W.2d 310 (1978). A prisoner need only convey the written notice and RFD to the appropriate prison officials to completely fulfill the requirements set forth under the IAD. *Commonwealth v. Martens*, 500 N.E.2d 282, 284 (Mass. 1986), *McCallum v. State*, 407 So.2d 865, 869 (Ala. Crim. App 1981); *Rockmore v. State*, 21 Ariz. App. 388, 390, 519 P.2d 877, 879 (1974); *Pittman v. State*, 301 A.2d 509, 512-513 (Del. 1973); *People v. Daily*, 46 Ill. App. 3d 195, 201-203, 360 N.E.2d 1131, 1137 (1977); *Ward v. State*, 435 N.E.2d 578, 581 (Ind. Ct. App. 1982); *Burns v. State*, 578 S.W.2d 650, 652 (Tenn. Crim. App. 1978). "Other than providing prison officials with the requires notice, which the defendant must undertake tko do, the duty if carrying out the statutory provisions belongs entirely to the authorities involved." *People v. Diaz*, 94 Misc.2d 1010, 1012, 406 N.Y.S.2d 239, 241 (1978). Should the custodial state fail or refuse to forward the RFD to the state that placed the detainer after receiving it, the detainer state, not the prisoner, is bound by that failure. See, eg., *Commonwealth v. Martens, supra; Pittman v. State, supra., Ward v. State, supra., Burns v. State, supra.* A delay by prison officials in transmitting a prisoners Request for Final Disposition, is not charged against the prisoner. *People v. Marshall*, 170 Mich. App. at 276, 428 N.W.2d at 43.

According to Article III(a) of the IAD:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and..... there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have **caused to be delivered** to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition. (emphasis added).

MCLA 780.601, MSA 4.147(1).

The warrant on this case was filed in Circuit Court on Fexbruary 29, 1988. The Defendant's rights under the IAD became effective when he was sentenced in April of 1988. WARRANT (attached). Since the Defendant was not informed of his rights under the IAD until September 7th, 1988, six months after the detainer was placed on him, he was unable to request disposition. However he did submit his written RFD to Indiana prison authorities on that date. On September 9, 1988, there was a letter attached to the prosecutor's answer from Michael Broglin, Superintendent of the Westville Correctional Center regarding the Defendant and the documents he had signed. Tr. at 4. Whether the letter was transmitted to the prosecutor is unknown. However, a letter was sent from the Indiana Prison authorities on September 20th, postmarked September 22, which contained the Defendant's RFD. It appears to have been received in Jackson, Michigan on September 26, 1988. Tr. at 4.

The Defendant executed and submitted his RFD to the Indiana prison authorities on September 7, 1988, but the request was not mailed until September 22, 1988, more than two weeks later. The

request was received by the 12th District Court and the Prosecuting Attorney on September 26, 1988. Tr. Brief at 2. Article III(b) of the IAD states that after receiving the RFD, the custodial official **shall promptly** forward it, together with the certificate to, the appropriate prosecuting official and court (emphasis added). MCLA 780.601, MSA 4.147(1). In this case, there was an unexplained delay of 13 days before the Defendant's RFD was mailed. Had the Prison Authorities forwarded the RFD promptly, the 180 days would have expired on March 6, 1989, 16 days before the trial started.

If the Court chooses to use September 20, 1988 as the date the 180 days begins, the Defendant would still have been brought to trial two days after the 180 day rule expired. What the above case law makes clear, is that once the Defendant has submitted his request, any delay in its processing, is to be counted against the state holding the detainer, not the Defendant.

In *Marshall*, the court ruled that Marshall had complied with the notice requirement of the IAD and invoked his right to prompt disposition, when he served the RFD on Wisconsin prison authorities. The court further stated that the 180 day period provided by the IAD was initiated once the Wisconsin prison authorities received the Defendant's request. Therefore, the 180 requirement was not met by the receiving state. Since no good cause for the delay was established by the prosecution, the conviction was vacated and the charges were dismissed. *People v. Marshall*, 170 Mich. App. at 270, 428 N.W.2d at 39.

The Court in *People v. Harris*, affirmed the *Marshall* Court's

decision to dismiss the charges. They held that a violation of the time constraints under Article IV (c) of the IAD results in an automatic dismissal. *People v. Harris*, 148 Mich. App. 506, 511, 384 N.W.2d 816, 818-819 (1986).

The Defendant, William Fex, asserted IAD rights and submitted his RFD to the Indiana prison authorities on September 7, 1988. Processing of his request was improperly delayed by the Indiana Prison Authorities and did not reach the prosecution until September 26. Since the delay by the prison authorities can not be attributed to the Defendant, this Court must recognize September 7th, 1988 as the start of the 180 day notice provision under the IAD. Should this Court find that two days are necessary to receive notice through the mail and allots for Sunday, then the 180 day requirement still would have expired on March 13, 1989, nine days before the trial date of Wednesday, March 22, 1989. Therefore, the decision of the Michigan Court of Appeals was correct and the 180 rule was violated. We ask that this Court reverse the decision of the Michigan Supreme Court and dismiss the charges against the Defendant. Jurisdiction of 28 USCA § 1254(1).

John B. Payne, Jr., Attorney for Petitioner

APPENDIX

Complaint

COMBINATION CA . 027

STATE OF MICHIGAN 12th
THE DISTRICT COURT — JUDICIAL DISTRICT NO.
County of JACKSON

COMPLAINT

CASE NO. 88 270 FY

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
WILLIAM FEX
W/M DOB: 11/07/66
3555 Dalton Road
Rives Junction, MI
CTN: 3888-001421-01
JCPD #87-30607
(Fort Wayne, Indiana Jail)
Defendant(s)

Date of Offense: On or about December 8, 1987
Location: City of Jackson
Complainant: Det. Michael Rand
Complaining Witness: Det. Michael Rand

STATE OF MICHIGAN
County of JACKSON } ss.

The above-named COMPLAINING WITNESS being duly sworn before the undersigned Judge, Magistrate, or Clerk of the District Court upon the date indicated below, says that heretofore on the DATE OF OFFENSE listed above, at the LOCATION listed above in the said County, State of Michigan, the above-named Defendant(s)

COUNT I: did assault a certain person, to-wit: Lee J. Stapleton, while being armed with a dangerous weapon, or an article used or fashioned in a manner to lead the person so assaulted t reasonably believe it to be a dangerous weapon, to-wit: a gun, and did then and there feloniously rob, steal and take from the person of said victim, or in his/her presence certain property, to-wit: money; contrary to MCL. 750.529; MSA 28.797. [750.529]

COUNT II: did make an assault upon Lee J. Stapleton with a dangerous weapon, to-wit: a long gun, but without intending to commit the crime of murder or to inflict great bodily harm less than the crime of murder; contrary to MCL 750.82; MSA 28.277. [750.82].

COUNT III: did carry or have in his/her possession a firearm, to-wit: a long gun, at the time he/she committed or attempted to commit a felony, to-wit: armed robbery and/or assault with a dangerous weapon; contrary to MCL 750.227b; MSA 28.424(2). [750.227B-A]

WARRANT AUTHORIZED BY
P35496 Assistant Prosecuting Attorney

contrary to the form of the statute in such case made and provided, etc.

WHEREFORE, the said Complainant prays that the said Defendant(s) may be apprehended and held to answer this Complaint and further dealt with in relation to the same as law and justice may require.

Dated February 29, 1988

Subscribed and Sworn to before me this day by

Complaining Witness

No

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Interstate Agreement on Detainer Forms

[illegible]

In duplicate. One copy, signed by the officer, shall be retained in the Institutional picket. The copy, signed by the Warden of the Institution or Facility held, shall be given to the officer. This is to be filled out when Form V is received at the Institution.

---

1. You have the right to challenge a request for temporary custody (Form V) in a court of law in this county.
2. You have the right to contest your delivery pursuant to a request for temporary custody (Form V) on the grounds that:
   a. the detainer documents on their face are not in order;
   b. you have not been charged with a crime in the requesting jurisdiction;
   c. you are not the person named in the detainer; or,
   d. you are not a fugitive.

If you wish to waive these statutory rights, you may do so by signing a Form V-A, a copy of which will be provided to you upon request.

By signing this page, you are only acknowledging that you have been offered a copy. You are not waiving any right that you have and are not agreeing to the request for temporary custody.

[signature]
Date

DOC 883595
Institution #

09-07-88
Date

[signature] DR WCC
Witness

Agreement on Detainers. Form I

In duplicate. One copy of this form, signed by the prisoner and the warden should be returned by the warden. One copy signed by the warden should be returned to the prisoner.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

AND OF RIGHT TO REQUEST DISPOSITION

Inmate William Fex No. 883595 Inst. Westville Correctional Center

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations or complaints against you concerning which the undersigned has knowledge and the source and contents of each.

Cause 88-270 FY Armed Robbery
Assault With a Deadly Weapon
Felon in Possession of a Firearm

You are hereby further advised that by the provisions of said Agreement, you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, after you shall have caused to be delivered to said prosecuting officer and said court, written notice of the place of your imprisonment and your request, together with a certificate of the custodial authority as above fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations and complaints on the basis of which detainers have been lodged against you from the State to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of this to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify G. Michael Broglin, Superintendent of the institution in which you are confined.

You are also advised that under provisions of said Agreement, the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may, institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

DATED: 09-07-88

X William Fex DOC #####

BY: _____

Warden - Superintendent - Director
G. Michael Broglin, Superintendent

RECEIVED:

DATE: _____

Agreement on Detainers: Form II

Two copies, if more than one jurisdiction in the state received has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state received. One copy should be returned to the prisoner. One copy should be retained by the warden. Signed copies must be sent by the Agreement Administrator of the state which has the prisoner incarcerated (or personnel official of the jurisdiction which lodged the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting officials and the court must be transmitted by certified or registered mail return receipt requested.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR

DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Joseph Filip, Prosec. Atty., Prosecuting Officer Jackson County (jurisdiction)

12th Judicial District, Court Jackson, Michigan (jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned is now imprisoned in:

Westville Correctional Center (institution) at Westville, Indiana (town and state)

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the dismissal of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which I am now confined.

If jurisdiction over this matter is property in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

DATED: 09-07-88

X William Fex DOC #####
(inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings incidental to this in the receiving state which may take place before his delivery to the jurisdiction in which the indictments, informations or complaints is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____ (name of counsel)

whose address is _____ (city, state and zip)

B. I request the appointment of counsel.

X William Fex DOC #####
(inmate's signature)

Agreement on Detainers. Form III

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all co of Form II. In the case of a request initiated by a prosecutor under A . IV, copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies also should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

RE: William Fex (inmate) 883595 (number)

Westville Correctional Center (institution) Westville, Indiana (location)

The [custodial authority] hereby certifies:

1. The term of commitment under which the prisoner above named is being held: two six (6) year concurrent sentenc
2. The time already served: 224 days as of 9/12/88
3. Time remaining to be served on the sentence: 1,743 days as of 9/12/88
4. The amount of good time earned: Presently in credit class I
5. The date of parole eligibility of the prisoner: 1/31/91
6. The decisions of the Board of Parole relating to the prisoner: (If additional space is needed use reverse side) N/A
7. Maximum expiration date under present sentence: 1/30/94
8. Detainers currently on file against this inmate from your state are as follows:

Cause 88-270 FY Armed Robbery

Assault With a Deadly Weapon

Felon in Possession of a Firearm

DATED: 09-07-88

Westville Correctional Center
Custodial Authority

BY: [signature]
Warden-Superintendent-Director
G. Michael Broglin, Superintendent

Agreement on Detainers. Form IV

[illegible] Date September 9, 1988

[illegible] TO DELIVER TEMPORARY CUSTODY

[illegible] Joseph Filip, Prosecuting Attorney (insert name and title if known) Presenting Officer

[illegible] Jackson County, Jackson, Michigan (jurisdiction)

[illegible] to all other prosecuting officers and courts of jurisdictions [illegible]

I.E. William Fex (inmate) Number 883595

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby [illegible] custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is the basis for the attached detainer(s) or your request(s) (detainers or your requests for custody of _____ (date)).

The required Certificate of Inmate Status is enclosed. (The required Certificate of Inmate Status was sent to you with our letter of _____ (date))

If prosecution under Article IV(d) of the Agreement are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in this state and you are hereby authorized to obtain the inmate for custody of appropriate authorities in these jurisdictions for the purposes of disposing of these indictments, informations or complaints.

Offense	County or Other Jurisdiction
Cause 88-270 FY Armed Robbery	Jackson County, Jackson, Michigan
Assault With a Deadly Weapon	
Felon in Possession of a Firearm	

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible?

Kindly acknowledge.

Westville Correctional Center
(name and title of receiving authority)

BY: [signature]
(Warden-Superintendent-Director) G. Michael Broglin, Supt.
P.O. Box 473, Westville, Indiana 46391
(Institution and address)

The request is _____ (name of inmate)

whose address is _____ (number, city and state)

I request the trial in support thereof.

DEC 28 87

SUPPLEMENT TO FORM I, INDICTMENT OR INFORMATION

In the event that the prosecuting officer of a jurisdiction in which any such indictment, information, or complaint is pending institutes proceedings to obtain a final disposition thereof, you are statutorily entitled to the procedural protection provided in the Indiana Uniform Criminal Extradition Act, IC 35-33-10-3.

Dated: 09-07-88

X [signature] DOC 883595
Name

By: [signature]
Superintendent - Director
G. Michael Broglin, Superintendent

Received: _____

Date: _____

EXPLANATION OF RIGHTS UNDER ARTICLE IV OF AGREEMENT ON DETAINERS

In duplicate. One copy, signed by the offender, shall be retained in the Institutional packet. One copy, signed by the designee of the Institution or Facility head, shall be given to the offender. This is to be filled out when Form V is received at the Institution.

1. You have the right to challenge a request for temporary custody (Form V) in a court of law in this county.
2. You have the right to contest your delivery pursuant to a request for temporary custody (Form V) on the grounds that:
   a. the detainer documents on their face are not in order;
   b. you have not been charged with a crime in the requesting jurisdiction;
   c. you are not the person named in the detainer; or,
   d. you are not a fugitive.

If you wish to waive these statutory rights, you may do so by signing a Form V-A, a copy of which will be provided to you upon request.

By signing this page, you are only acknowledging that you have been offered a copy. You are not waiving any right that you have and are not agreeing to the request for temporary custody.

X [signature]
Name

DOC 883595
Institution #

09-07-88
Date

[signature] DD WCC
Witness

FORM V-A

PRISONER'S AGREEMENT TO TEMPORARY TRANSFER OF CUSTODY

I, William Fex (Prisoner's Full Name), 883595 (Institution #)

am currently incarcerated at Westville Correctional Center (Institution)

P.O. Box 473, Westville, Indiana 46391 (Address)

Without admitting my guilt or innocence, I acknowledge that I am the same person named in the attached request for temporary custody (Form V). I understand that I am entitled to challenge that request for temporary custody in a court of law in this county. I have also been advised that the Governor may intercede in my behalf within thirty (30) days of the request for temporary custody. I wish to waive my right to challenge the request for temporary custody in a court of law, and agree to waive the thirty (30) day period so that I may be transferred as soon as possible.

I also agree that this agreement shall be a waiver of extradition with respect to any charge or proceeding contemplated hereby, and a waiver of extradition to the requesting state to serve any sentence imposed upon me, after completion of my term of imprisonment in this state.

X [signature] DOC [illegible]
Signed

09-07-88
Date

[signature] DPO WCC
Witness

State Form 21103

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
Release Office

Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

State Form 2384(R2)

STATE OF INDIANA

DEPARTMENT OF CORRECTION

WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391-0473
(219) 785-2511

September 20, 1988

Joseph Filip, Prosecuting Attorney
Jackson County
312 S. Jackson St.
Jackson, MI 49201

Re: William Fex
DOC 883595

Enclosed please find the Interstate Agreement on Detainers requesting disposition on the stated cause(s) regarding the above captioned subject.

Sincerely,

Roy A. Smith

Roy A. Smith
Correctional Release Coordinator

Encl.

RECEIVED
SEP 26 1988
PROSECUTORS OFFICE

Letters of Authority

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

AGREEMENT ON DETAINERS: Form VI

IN QUADRUPLICATE. ALL COPIES, SIGNED BY THE PROSECUTOR AND THE AGENT SHOULD BE SENT TO THE ADMINISTRATOR OF THEIR OWN STATE. AFTER SIGNING ALL COPIES, THE ADMINISTRATOR SHOULD RETAIN ONE FOR HIS FILES, SEND ONE TO THE WARDEN OF THE INSTITUTION IN WHICH THE PRISONER IS LOCATED AND RETURN TWO COPIES TO THE PROSECUTOR WHO WILL GIVE ONE TO THE AGENT FOR USE IN ESTABLISHING HIS AUTHORITY AND PLACE ONE IN HIS FILES.

TO Peter Chatfield
(ADMINISTRATOR OF THE AGREEMENT ON DETAINERS)

William Fex (INMATE) is confined in

Westville Correctional Center (INSTITUTION) P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

and will be taken into custody at the institution on _____

for return to this jurisdiction for trial on or about March 15, 1989

In accordance with Article V(b), I have designated _____

whose signature appears below as agent to return the prisoner.

_____
SIGNATURE (Prosecuting Official)

_____
SIGNATURE (Agent)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers,

_____ (AGENT) is hereby designated as agent for this state to return

_____ (INMATE) for trial.

_____
ADMINISTRATOR

MICHIGAN DEPARTMENT OF CORRECTIONS

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

CSO 221F Rev. 9/80

AGREEMENT ON DETAINERS: Form VI

IN QUADRUPLICATE. ALL COPIES, SIGNED BY THE PROSECUTOR AND THE AGENT SHOULD BE SENT TO THE ADMINISTRATOR OF THEIR OWN STATE. AFTER SIGNING ALL COPIES, THE ADMINISTRATOR SHOULD RETAIN ONE FOR HIS FILES, SEND ONE TO THE WARDEN OF THE INSTITUTION IN WHICH THE PRISONER IS LOCATED AND RETURN TWO COPIES TO THE PROSECUTOR WHO WILL GIVE ONE TO THE AGENT FOR USE IN ESTABLISHING HIS AUTHORITY AND PLACE ONE IN HIS FILES.

TO G. Peter Chatfield, Deputy
(ADMINISTRATOR OF THE AGREEMENT ON DETAINERS)

William Fex (INMATE) is confined in

Westville Correctional Center (INSTITUTION) P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

and will be taken into custody at the institution on 10-25-88

for return to this jurisdiction for trial on or about March 15, 1989

In accordance with Article V(b), I have designated Jason D. Hall

whose signature appears below as agent to return the prisoner.

Jerold Schneeberger
SIGNATURE: (Prosecuting Official)

Jason D. Hall
SIGNATURE: (Agent)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers,

Jason D. Hall (AGENT) is hereby designated as agent for this state to return

William Fex (INMATE) for trial.

G. Peter Chatfield
Deputy ADMINISTRATOR
G. Peter Chatfield

MICHIGAN DEPARTMENT OF CORRECTIONS

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST OR DISPOSITION OF A DETAINER

CSO 221G Rev. 9/80

AGREEMENT ON DETAINERS: Form VII

IMPORTANT: THIS FORM SHOULD ONLY BE USED WHEN AN OFFER OF TEMPORARY CUSTODY HAS BEEN RECEIVED AS THE RESULT OF A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER. IF THE OFFER HAS BEEN RECEIVED BECAUSE ANOTHER PROSECUTOR IN YOUR STATE HAS INITIATED THE REQUEST, USE FORM VIII. COPIES OF FORM VII SHOULD BE SENT TO THE WARDEN, THE PRISONER, THE OTHER JURISDICTIONS IN YOUR STATE LISTED IN THE OFFER OF TEMPORARY CUSTODY, AND THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED. COPIES SHOULD BE RETAINED BY THE PERSON FILING THE ACCEPTANCE AND THE JUDGE WHO SIGNS IT.

TO: G. Michael Brooks (WARDEN, SUPERINTENDENT, DIRECTOR) Westville Correctional Center (INSTITUTION)

P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

In response to your letter of 9/22/88 (DATE) and offer of temporary custody regarding William Fex (NAME OF PRISONER)

who is presently under indictment, information, complaint in the County of Jackson (JURISDICTION) of which I am

Prosecuting Attorney (TITLE OF PROSECUTING OFFICER), please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: (If your jurisdiction is the only one named in the offer to temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

SIGNATURE
TITLE
Prosecuting Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 10/26/88

SIGNATURE (Judge)
COURT

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
RElease Office

CERTIFIED
P 956 212 004
MAIL

WESTVILLE IND SEP 22 '88
U.S. POSTAGE
2.20

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Return Receipt Requested

State Form 2384R2

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
RElease Office

CERTIFIED
P 956 212 004
MAIL

WESTVILLE IND. SEP 27 '86

U.S. POSTAGE
2.20

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Return Receipt Requested

Certified Mail Receipt

State Form 2384R3

Notice of Receipt of Forms

STATE OF INDIANA

DEPARTMENT OF CORRECTION

WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391-0473
(219) 785-2511

September 20, 1988

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Re: William Fex
883595

Enclosed please find the Interstate Agreement on Detainers requesting disposition on the stated cause(s) regarding the above captioned subject.

Sincerely,

Roy A. Smith

Roy A. Smith
Correctional Release Coordinator

Encl.

9-30-88

The Defendant has not been arraigned on this charge as of 9-30-88, in the 12th. District Court. If you have any questions, please call. 517-788-4260.

Rosalie Steffes
Deputy Clerk

AN EQUAL OPPORTUNITY EMPLOYER

Agreement on Detainers Form II

[illegible]

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Joseph Filip, Prosec. Atty., Prosecuting Officer Jackson County (jurisdiction)

12th Judicial District, Court Jackson, Michigan (jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned is now imprisoned in:

Westville Correctional Center (institution) at Westville, Indiana (town and state)

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the dismissal of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall operate as a request by me to the prosecution of any body or any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a waiver of any such extradition custody to be returned to the institution in which I am now confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are submitted.

DATED: 09-07-88 [signature] DOC 883595
(inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings necessary to find in the receiving state which may take place before his delivery to the jurisdiction in which the indictments, informations or complaints are pending. Failure to use the blank and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____ (name of counsel)
whose address is _____ (city, street and state)

B. I request the court to appoint counsel. [signature] DOC 883595
(inmate's signature)

Agreement on Detainers. Form I

In duplicate. One copy of this form, signed by the prisoner and the warden where he is held, is to be sent by the warden directly to the prosecuting official and court of the jurisdiction which has lodged the detainer against the prisoner.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

AND OF RIGHT TO REQUEST DISPOSITION

Inmate William Fex No. 883595 Inst. Westville Correctional Center

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations or complaints against me which are known to the undersigned and the source and contents of each.

Cause 88-270 FY Armed Robbery
Assault With a Deadly Weapon
Felon in Possession of a Firearm

You are hereby further advised that by the provisions of said Agreement, you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days after you have caused to be delivered to said prosecuting officer and said court, written notice of the place of your imprisonment and this request, together with a certificate of the custodial authority as above fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations and complaints on the basis of which detainers have been lodged against you from the State to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of this to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to send G. Michael Broglin, Superintendent of the institution in which you are confined.

You are also advised that under provisions of said Agreement, the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may, if he has good cause in his opinion, institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

DATED: 09-07-88

BY: _____
Warden - Superintendent - Director
G. Michael Broglin, Superintendent

RECEIVED:

DATE: _____

MICHIGAN DEPARTMENT OF CORRECTIONS

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

CSO 221GRev. 9/80

AGREEMENT ON DETAINERS: Form VII

IMPORTANT: THIS FORM SHOULD ONLY BE USED WHEN AN OFFER OF TEMPORARY CUSTODY HAS BEEN RECEIVED AS THE RESULT OF A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER. IF THE OFFER HAS BEEN RECEIVED BECAUSE ANOTHER PROSECUTOR IN YOUR STATE HAS INITIATED THE REQUEST, USE FORM VIII. COPIES OF FORM VII SHOULD BE SENT TO THE WARDEN, THE PRISONER, THE OTHER JURISDICTIONS IN YOUR STATE LISTED IN THE OFFER OF TEMPORARY CUSTODY, AND THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED. COPIES SHOULD BE RETAINED BY THE PERSON FILING THE ACCEPTANCE AND THE JUDGE WHO SIGNS IT.

TO: G. Michael Broglin (WARDEN, SUPERINTENDENT, DIRECTOR) Westville Correctional Center (INSTITUTION)

P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

FILED
'88 OCT 20 P2:18

In response to your letter of 9/20/88 (DATE) and offer of temporary custody regarding William Fex (NAME OF PRISONER)

who is presently under indictment, information, complaint in the County of Jackson (JURISDICTION) of which I am

Prosecuting Attorney (TITLE OF PROSECUTING OFFICER), please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: (If your jurisdiction is the only one named in the offer to temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

SIGNATURE: [signature]

TITLE: Prosecuting Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 10/20/88

SIGNATURE (Judge): [signature]

TITLE: Judge, 30th District Court

Judgment

Approved, SCAO

Original - Court
1st copy - Corrections

2nd copy - Correct a (for return)
3rd copy - Arresting agency

STATE OF MICHIGAN JUDICIAL DISTRICT 4th JUDICIAL CIRCUIT	JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT	CASE NO. 88 49555 FC

ORI MI 380015J — Court address Jackson County Circuit Court, 312 S. Jackson St., Jackson, MI 49201 — Court telephone no 517/788-4360

THE PEOPLE OF THE STATE OF MICHIGAN v

Defendant name, address, and telephone no: WILLIAM FEX

CTN	SID	DOB
38 88001421-01	1458433-A	11-7-66

Prosecuting attorney name	Bar no
JOSEPH S. FILIP	22920

Defendant attorney name	Bar no
WENDELL E. JACOBS, JR.	15406

1. THE COURT FINDS that defendant, represented by counsel, was found guilty on 3-23-89 (Date) of the crime(s) as stated below:

Count	CONVICTED BY Plea*	Court	Jury	CRIME	CHARGE CODE Specify section and sub section
1			G	ARMED ROBBERY	750.529
3			G	FELONY FIREARM	750.227B-A

*Plea, insert G for guilty plea use NC for nolo contendere use MI for guilty but mentally ill

IT IS ORDERED:

2. Defendant is sentenced to the custody of the Michigan Department of Corrections as stated below. This sentence shall be immediately executed.

Count	SENTENCE DATE	MINIMUM Years	Mos	Days	MAXIMUM Years	Mos	DATE SENTENCE BEGINS	JAIL CREDIT Mos	Days	OTHER INFORMATION
1	4-20-89	5			20		At the termination of the sentence imposed this date on the felony firearm charge.			
3	4-20-89	2			2		4-20-89			

OFFENSE DATE 12-8-87

☐ Defendant shall pay restitution of $_____

FILED
IN MY OFFICE
APR 21 PM 2 15
[illegible] KAHN
CLERK OF COUNTY

3. Court recommendation:

April 20, 1989
Date

Circuit Court Judge GORDON W. BRITTEN (P11216) Bar no

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy Court Clerk

CC 219b (3/87) JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT MCR 6.103

Petition for Appellate Counsel

AFFIDAVIT AND PETITION FOR APPELLATE ATTORNEY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

The People of the State of Michigan

vs.

WILLIAM FEX
Defendant

No. 88 49555 FC

STATE OF MICHIGAN
COUNTY OF JACKSON } SS.

William Fex, being duly sworn, deposes and says that he (she) is the defendant in the above entitled cause; that he (she) was sentenced in said court on the 20th day of April, 19 89, for the crime of Armed Robbery

that not more than Fifty Six (56) days have elapsed since such sentence; that he (she) is financially unable to secure the assistance of an attorney for appellate review of said cause, and he (she) petitions said court to appoint an attorney and to furnish the attorney with such portions of the transcript and record that the attorney requires to prepare post conviction motions and to perfect an appeal.

Defendant

Subscribed and sworn to before me

This 2 day of Jan, 1990.

Robert J. Burdette
NOTARY PUBLIC STATE OF INDIANA
LA PORTE COUNTY
MY COMMISSION EXP. MAR 8 1993

RECEIVED

THIS FORM MUST BE RETURNED TO THE COURT WITHIN FIFTY SIX (56) DAYS FROM THE DATE OF SENTENCE.

STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT
Order Appointing Counsel
JACKSON COUNTY 312 S. Jackson St.
Jackson, MI 201 (517) 788-4382

ORDER FOR APPOINTMENT OF APPELLATE COUNSEL AND TRANSCRIPT

CASE NO: 88 - 49555 FC

PEOPLE OF THE STATE OF MICHIGAN
VS.
WILLIAM FEX
#883595
CTN: 38 88 001421 01
SID: 1458433-A DOB:11-7-66

ORIGINAL CHARGE(S) (MCL cite):
750.529; 750.82; 750.227b
CONVICTED OF (MCL cite):
750.529; 750.227B-A
SENTENCE(S):
5 - 20 Yrs.

DATE: June 9, 1989 JUDGE: GORDON W. BRITTEN

1. On June 8, 1989 defendant filed a petition for appointment of counsel and indigency affidavit.

IT IS ORDERED:

2. Defendant's request for appellate counsel is denied because: _____ petition is untimely OR _____ defendant is not indigent.

3. JOHN B. PAYNE JR., 22312 Garrison, Dearborn, MI 48124
(313) 562-5440

is appointed counsel for defendant in post-conviction proceedings. If appointed counsel cannot, or will not, accept his appointment, counsel shall notify the court immediately. That counsel shall, prior to obtaining authorization for payment from the Court, return all portions of the transcripts provided at County expense, to the County Clerk, Court Services Division for retention in the court file.

4. Court reporter(s) shall file with the trial court clerk and furnish to counsel the portion of the transcript checked below, and any other transcripts requested by counsel in this case. Reporter(s) shall be paid as provided by law.

Transcript Ordered:	Reporter:	Designat.& No:	Date of Proceeding:
1. xxxxx Jury Trial	D. Gehl	(Decator)	
2. _____ Bench Trial			
3. _____ Plea			
4. _____ Prob. Viol.			
___ Plea/ ___ Trial			
5. _____ Sentence			
6. _____ Other (Specify)			

5. If defendant pled guilty, guilty but mentally ill, or nolo contender transcripts must be furnished within 28 days of the date of this order (MCR 6.101(B)).

6. A copy of the register of actions shall be sent to counsel. The clerk shall forward copies of all transcripts and documents as counsel requests. (MCR 6.101(L)).

6-12-89
Date

Gordon W. Britten, Circuit Judge

CERTIFICATE OF MAILING:
I certify that on this date I mailed a copy of this order to counsel, defendant, prosecutor, and the Michigan Appellate Assigned Counsel System.

6/12/89
Date

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, June 21, 1991

Plaintiff-Appellee,

v No. 119192

WILLIAM FEX,

Defendant-Appellant.

Before: Neff, P.J., and Murphy and Marilyn Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant appeals and claims that charges must be dismissed due to a violation of the statute relating to the Interstate Agreement on Detainers (IAD), MCL 780.601; MSA 4.147(1). Defendant argues that the court lacked jurisdiction to try him since trial did not commence within the 180 days as required by this statute. We agree and reverse defendant's convictions.

The record reveals that on September 7, 1988, defendant was notified of a detainer and his rights pursuant to the IAD and on the same date he made his request for disposition to the Indiana prison authorities, where he was being held. Apparently, the Indiana prison authorities did not immediately forward the disposition request to the Jackson County Prosecutor's Office, as it was not received by that office until September 26, 1988. Trial commenced on March 22, 1989, more than 180 days after defendant served his dispositional request on the Indiana authorities.

Michigan case law is clear that the commencement of the 180-day statutory period was triggered by the defendant's request for final disposition to the prison officials in this case. People v Malone, 177 Mich App 393, 399; 442 NW2d 658 (1989); People v Marshall, 170 Mich App 269, 276-277; 428 NW2d 39 (1988). Since the charges against defendant were not brought to trial within the requisite 180 days, and noting that no exceptions to the statutory requirement are claimed, dismissal of the charges against defendant is mandated. People v Joseph Bowman, __ Mich App __; __ NW2d __ (Docket No. 69453, decided May 7, 1991, 9:35 a.m.).

For the forgoing reasons, defendant's convictions and sentences are vacated and the charges dismissed.

Reversed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Marilyn Kelly

Michigan Supreme Court
Lansing, Michigan 48909

Syllabus

Michigan Supreme Court Decision

Chief Justice
Michael F. Cavanagh

Associate Justices
Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.

This syllabus was prepared by the Reporter of Decisions.

Reporter of Decisions
William F. Haggerty

PEOPLE v FEX

Docket No. 91979. Decided January 9, 1992. On application by the people for leave to appeal, the Supreme Court, in lieu of granting leave, reversed the judgment of the Court of Appeals and reinstated the judgment of the circuit court.

William Fex was charged in the Jackson Circuit Court with armed robbery and possession of a firearm during the commission of a felony. Before trial, the court, Gordon W. Britten, J., denied the defendant's motion for dismissal, finding the trial to be within the 180-day limitation period of the Interstate Agreement on Detainers. Thereafter, the defendant was convicted by a jury. The Court of Appeals, Neff, P.J., and Murphy and Marilyn J. Kelly, JJ., reversed in an unpublished opinion per curiam (Docket No. 119192). The people seek leave to appeal.

In an opinion per curiam, signed by Justices Brickley, Boyle, Riley, Griffin, and Mallett, the Supreme Court held:

The Court of Appeals erred in calculating the 180-day period.

The period begins to run when a prisoner's request for final disposition of an indictment, information, or complaint is received by officials of the state in which the prosecution is pending. Under the agreement, a prisoner has caused delivery when there is actual receipt.

Reversed.

Justice Levin, joined by Chief Justice Cavanagh, dissenting, stated that peremptory reversal should be reserved for cases in which the law is settled and no factual assessment is required. In this case, because a legal assessment is required, peremptory disposition is not appropriate.

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Michigan Supreme Court
Lansing, Michigan 48909

Opinion

Chief Justice
Michael F. Cavanagh

Associate Justices
Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.

FILED JANUARY 9, 1992

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

No. 91979

WILLIAM FEX,

Defendant-Appellee.

PER CURIAM

The Court of Appeals reversed this defendant's convictions on the ground that his trial did not take place within the 180-day time limit that is found in the Interstate Agreement on Detainers. We conclude that the Court of Appeals erred in its calculation of the 180-day period. We therefore reverse the judgment of the Court of Appeals and reinstate the judgment of the circuit court.

I

In December 1987, a robbery took place at a Jackson restaurant. Following an investigation, the defendant was

charged with armed robbery and possession of a firearm during the commission of that felony.[1] MCL 750.529, 750.227b: MSA 28.797, 28.424(2).

For an unrelated conviction, the defendant was incarcerated during 1988 at the Westville Correctional Center in Indiana. On September 7, 1988, he learned that Michigan authorities had placed a detainer on him as a result of the Jackson robbery. That day, he gave the Indiana prison authorities his request for final disposition of the robbery charge.

The Indiana authorities mailed the defendant's request on September 22, 1988. It was received by the Jackson County Prosecuting Attorney on September 26, 1988.

The defendant's trial began on March 22, 1989, when a jury was selected. March 22 was 177 days after the request was received in Jackson County, 181 days after it was mailed from Indiana, and 196 days after the defendant delivered his request to the Indiana authorities.

Prior to trial, the defendant had filed a written motion for dismissal under the Interstate Agreement on Detainers (IAD). MCL 780.601 et seq.; MSA 4.147(1) et seq. In his motion, he argued that the trial would not begin until after the 180-day limitation found in Article III(a) of the IAD.

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[1]The defendant was also charged with assault with intent to murder, but that count was later dismissed. MCL 750.82; MSA 28.277.

The trial court heard and denied the motion on the first day of trial. The next day, the jury found the defendant guilty of armed robbery and felony-firearm.[2]

The defendant's convictions were reversed by the Court of Appeals.[3] The prosecutor has applied for leave to appeal.

II

Article III(a) of the IAD provides that a defendant "shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint . . . ." This case squarely presents the question whether the phrase "caused to be delivered" refers to the date when the request is given to prison authorities, or the date when the request is received by officials of the state where the prosecution is pending.

The IAD is several decades old and is written in a style that permits the interpretation urged by the defendant.[4]

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[2]The defendant was sentenced to a term of from five to twenty years in prison for armed robbery. He also received the mandatory two-year consecutive term for felony-firearm.

[3]Unpublished opinion per curiam of the Court of Appeals, decided June 21, 1991 (Docket No. 119192).

[4]Article III(a) does not explicitly state that the notice must be received in order to trigger the 180-day period. Nor does it say that the prisoner must deliver his request. Instead, the statute requires the prisoner to have "caused"

However we are persuaded that the proper interpretation is that urged by the prosecutor. In Article III (b), the IAD states a prisoner's duty to give or send the request to the prison authorities who are holding him. Similar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a), if the drafters had been so inclined. Instead, the period runs from the time when the prisoner has caused delivery, which is actual receipt.

This interpretation is consistent with the explanation offered by the United States Supreme Court in Carchman v Nash, 473 US 716, 721; 105 S Ct 3401; 87 L Ed 2d 516 (1985):

> "Specifically, Art. III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, together with the certificate providing certain information about the prisoner's terms of confinement, to the appropriate prosecuting official and court of the receiving State. The authorities in the receiving State then must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information, or complaint with prejudice, and the detainer will cease to be of any force or effect." (Emphasis supplied.)

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the delivery. Since Article III(b) specifically states that the prisoner is to give the request to the prison authorities (the prisoner is not personally to send the request to the state that seeks to prosecute), one could say that a prisoner who has fulfilled the obligation under Article III(b) has "caused" the delivery to the extent that it is within the prisoner's power to do so.

A similar view is found in the report that the United States Senate Judiciary Committee presented when it recommended passage of the IAD:

> "Under the agreement, prison authorities are required to inform prisoners of all indictments, informations, or complaints on the basis of which detainers have been lodged against them by other jurisdictions. Prisoners may then request trial on such pending charges. Any request is transmitted through the warden to the proper official in the other jurisdiction who then has 180 days to bring the prisoner to trial." Senate Report No. 91-1356, 91st Congress, 2d Session, 3 US Code Cong & Admin News, 4864, 4865 (1970). (Emphasis supplied).

The rule requiring actual receipt of the prisoner's request has been adopted in the overwhelming majority of jurisdictions that have considered this question.[5] A typical discussion is found in State v Moore, 774 SW2d 590, 595 (Tenn, 1989), where the Tennessee Supreme Court explained:

> "In our opinion the receiving state cannot be charged with attempting to try the prisoner within 180 days until the receiving state has been given notice, by the prisoner or by officials of the sending state, of a request to proceed under Article III. Once that burden has been satisfied by the prisoner, the receiving state must, of course, comply with the terms of the Compact. There is a division of authority on this point. A few states have calculated the time from the date of the signing of the request for disposition, Form II, regardless of whether the receiving state receives the request or not. See, e.g., McCallum v State, 407 So 2d 865 (Ala Crim App, 1981), People v Daily, 46 Ill App 3d 195; 4 Ill Dec 756; 360 NE2d 1131 (1977), Commonwealth v Martens, 398 Mass 674; 500 NE2d 282 (1986), cert den 481 US 1041; 107 S Ct

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[5]An obvious purpose of an interstate agreement is to achieve a uniform body of law in the jurisdictions that have enacted the agreement. Absent sound reasons to the contrary, it is therefore sensible to interpret such an agreement in the same manner as a majority of other jurisdictions.

1982; 95 L Ed 2d 821 (1987), State v Well[illegible] 186 NJ Su[illegible] 497; 453 A2d 236 (1982), and [illegible]ple v [I[illegible]egrino], 131 Misc 2d 118; 499 NYS2d 841 (1986).

"By far a greater number of cases, however, have reached the opposite conclusion, holding that the prosecutor or court in the receiving state cannot reasonably be expected to proceed until receipt of notice of the prisoner's request. See, e.g., Young v Mabry, 471 F Supp 553 (ED Ark, 1978), aff'd 596 F2d 339 (CA 8 [1979]), cert den 444 US 853; 100 S Ct 107; 62 L Ed 2d 69 (1979); Beebe v Vaughn, 430 F Supp 1220 (D Del, 1977); Spears v State, 280 Ark 577; 660 SW2d 913 (1983); People v Bielecki, 41 Colo App 256; 588 P2d 377 (1978); State v Braswell, 194 Conn 297; 481 A2d 413 (1984), cert den sub nom Braswell v Connecticut, 469 US 1112; 105 S Ct 793; 83 L Ed 2d 786 (1985); State v Minnick, 413 So 2d 168 (Fla App, 1982); Pinnock v State, 384 So 2d 738 (Fla App, 1980); Thompson v State, 186 Ga App 379; 367 SE2d 247 (1988); Scrivener v State, 441 NE2d 954 (Ind, 1982); Holland v State, 265 Ind 216; 352 NE2d 752 (1976); Sweat v Darr, 235 Kan 570; 684 P2d 347 (1984); State v White, 234 Kan 340; 673 P2d 1106 (1983); Hines v State, 58 Md App 637; 473 A2d 1335 (1984); State v Walton, 734 SW2d 502 (Mo [en banc], 1987); State v McGann, 126 NH 316; 493 A2d 452 (1985); State v Ternaku, 156 NJ Super 30; 383 A2d 437 (1978); State v Reitz, 26 Ohio App 3d 1; 498 NE2d 163 (1984); Commonwealth v Fisher, 451 Pa 102; 301 A2d 605 (1973); State v Moosey, 504 A2d 1001 (RI, 1986). See generally anno: 98 ALR[3d] 160, § [16][a] . . . .

"In these cases it has been noted that it would be contrary to the public interest to start the 180 day period before actual receipt by the prosecutor of the prisoner's request and that this could not have been the legislative intent in enacting the Compact. Article III requires that the receiving state proceed after the prisoner 'shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of his imprisonment and his request for final disposition' of the charges pending there. (Emphasis added)."

In the present case, the Court of Appeals cited three prior decisions for the rule that the 180-day statutory period

is triggered when a defendant provides a req t for final disposition to prison authorities. People v Marshall, 170 Mich App 269, 277; 428 NW2d 39 (1988); People v Malone, 177 Mich App 393, 398-399; 442 NW2d 658 (1989); People v Bowman, 189 Mich App 215, 218-219; 472 NW2d 645 (1991). However, an examination of these authorities demonstrates that they are of limited applicability.

In Marshall, a prisoner's initial request for final disposition was never delivered by prison authorities. Similarly, Bowman involved a complete failure to forward a prisoner's request.[6] The statement in Malone was dictum.[7]

In light of all these considerations, we are persuaded that the majority rule should be adopted in Michigan. We thus conclude that the Court of Appeals erred when it found that the defendant was not tried within the 180-day period stated in Article III(a) of the IAD.[8] We therefore reverse the judgment of the Court of Appeals and reinstate the judgment

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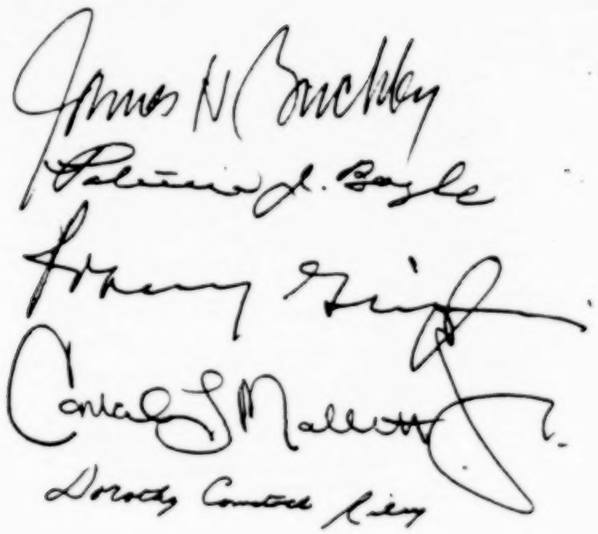
[6]Since Article III(b) states that prison authorities "shall promptly forward" a prisoner's request, we reserve the question how the IAD should be applied in a case where the request is never forwarded or where there is a very substantial delay in delivering the defendant's request.

[7]Under the analysis applied by the Court of Appeals in Malone, the defendant was timely tried without regard to whether the 180-day period was triggered by the defendant giving notice to prison authorities or by actual receipt in the state where the prosecution was pending.

[8]We have considered the defendant's other arguments, and are not persuaded that relief should be granted on those claims.

of the circuit court.[9] MCR 7.302(F)(1).



[9] The defendant's motion for bond pending appeal is therefore denied as moot.

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

No. 91979

WILLIAM FEX,

Defendant-Appellee.

BEFORE THE ENTIRE BENCH

LEVIN, J. (dissenting).

I adhere to the view that peremptory reversal should be reserved for cases in which the law is settled and no factual assessment is required.[1] In the instant case, as indicated in

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[1] Roek v Chippewa Valley Bd of Ed, 430 Mich 314, 322; 422 NW2d 680 (1988) (Levin, J., separate opinion); Grames v Amerisure Ins Co, 434 Mich 867, 868-875 (1990) (Levin, J., dissenting); People v Little, 434 Mich 752, 769-770; 456 NW2d 237 (Levin, J., dissenting); People v Wrenn, 434 Mich 885, 885-886 (1990) (Levin, J., dissenting); Harkins v Northwest Activity Ctr, Inc, 434 Mich 896, 899 (1990) (Levin, J., dissenting); Dep't of Social Services v American Commercial Liability Ins Co, 435 Mich 508, 515; 460 NW2d 194 (1990) (Levin, J., separate opinion); Yahr v Garcia, 436 Mich 872 (1990) (Levin, J., dissenting); Universal Underwriters Ins Co v Vallejo, 436 Mich 872, 873-874 (1990) (Levin, J., dissenting); People v Stephens, 437 Mich 901, 901-908 (1991) (Levin, J., dissenting); People v Berkey, 437 Mich 40, 54; 467 NW2d 6 (1991) (Levin, J., dissenting); Turner v Washtenaw Co Road Comm, 437 Mich 35, 38-39; 467 NW2d 4 (1991) (Levin, J., separate opinion); Lepior v Venice Twp, 437 Mich 951, 952-962 (1991) (Levin, J., dissenting).

the ma jority opinion, a legal assessment is required. Peremptory disposition is not appropriate.

The meaning of the phrase, "within one hundred and eighty days after [the prisoner] shall have caused to be delivered" to the prosecutor and the court, written notice and request for formal disposition (Interstate Agreement on Detainers, MCL 780.601; MSA 4.147[1]), is not so free from doubt that peremptory disposition is appropriate.

The paraphrase of the quoted words by the United States Supreme Court, set forth in the majority opinion, who then has 180 days to bring the prisoner to trial,[2] does not indicate whether the 180 days begin to run when notice is given or sent by the prisoner, or, rather, when notice is received by the prosecutor and court. The integrity of, and judicial reliance on, congressional committee reports, has been questioned.[3]

See Schweiker v Hansen, 450 US 785, 791; 101 S Ct 1468; 67 L Ed 2d 685 (1981) (Marshall, J., dissenting) ("A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error"); Leis v Flynt, 439 US 438, 457-458; 99 S Ct 698; 58 L Ed 2d 717 (1979) (Stevens, J., dissenting) ("Summary reversal 'should be reserved for palpably clear cases of . . . error.' Eaton v Tulsa, 415 US 697, 707 [94 S Ct 1228; 39 L Ed 2d 693 (1974)] [Rehnquist, J., dissenting]").

[2]Slip op, p 4.

[3]"[W]e are a Government of laws not of committee reports." Wisconsin Public Intervenor v Mortier, 501 US ____; 111 S Ct 2476; 115 L Ed 2d 532, 553 (1991) (Scalia, J., concurring).

The weight of authority is surely worthy of consideration, but has not been thought to be controlling, or a sufficient reason, in itself, for decision.

Charles L. Levin

Michael F. Cavanagh